

1 JACKIE LACEY
2 District Attorney of Los Angeles County
3 By: CYNTHIA BARNES; State Bar No. 187385
4 Deputy District Attorney
5 MAJOR CRIMES DIVISION
6 211 WEST TEMPLE STREET, SUITE 1100
7 LOS ANGELES, CA 90012
8 (213) 257-2250
9 cbarnes@da.lacounty.gov

10 Attorney for Plaintiff

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Case No. BA481154

15 Plaintiff,

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17 **MEMORANDUM CONCERNING
BAIL DEVIATION; STATEMENT OF
FACTS; POINTS AND
AUTHORITIES; AND SUPPORTING
EXHIBITS**

18 v.

19 EDWARD BUCK,

20 Defendant.

21 **TO THE DEFENDANT EDWARD BUCK:**

22 **PLEASE TAKE NOTICE** that the People request the Court to issue the following
23 order(s) concerning defendant's bail:

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19 (X) Order to set bail to \$4,000,000 pursuant to California Penal Code § 1269c
et seq.

20 (X) Order to place a hold on the release of the defendant from custody until
the court is satisfied that no portion of the proffered bail was feloniously
obtained, pursuant to California Penal Code § 1275.1.

This motion will be based on this notice of motion and motion, the files and pleadings in the above-entitled matter, the attached points and authorities, attached exhibits, and on such other and further evidence and argument as may be introduced at the hearing of this motion.

Dated this 17TH day of September, 2019

Respectfully submitted,

JACKIE LACEY
District Attorney of Los Angeles County

By:

CYNTHIA BARNES
Deputy District Attorney
Attorney for Plaintiff

STATEMENT OF FACTS

Defendant Edward Buck is a violent, dangerous sexual predator. He mainly preys on men made vulnerable by addiction and homelessness. Using the bait of narcotics, money, and shelter, the defendant lures these vulnerable victims to his home. From his home, in a position of power, Buck manipulates his victims into participating in his sexual fetishes. These fetishes include supplying and personally administering dangerously large doses of narcotics to his victims. Buck's aggressive and malevolent behavior led to the death of two men in Buck's apartment, Gemmel Moore and Timothy Dean. Not deterred by the senseless deaths of Moore and Dean, the defendant nearly killed a third victim last week. The defendant's predatory acts and conscious disregard for human life must be stopped.

On July 27, 2017, Gemmel Moore was found dead of an apparent methamphetamine overdose in Edward Buck's apartment. (Exhibit 1) Narcotics paraphernalia, including 24 hypodermic needles, five glass narcotics smoking pipes, methamphetamine, and sex toys were located in the apartment. (Exhibit 1) The needles and drugs were found in a tool box. (Exhibit 1)

Despite the tragic death of Gemmel Moore, defendant Buck continued with his dangerous, predatory behavior. On January 7, 2019, Timothy Dean was found dead of an apparent methamphetamine overdose in Edward Buck's apartment. (Exhibit 2) As with the Moore death, narcotics paraphernalia and sex toys were located in the apartment. (Exhibit 2)

Still not deterred despite two deaths in his apartment, Buck persisted in his malevolent behavior. On or about September 4, 2019, Buck personally and deliberately administered a dangerously large dose of methamphetamine to Joe Doe. (Exhibit 3) Concerned he was suffering from a methamphetamine overdose, Doe left the apartment to get medical attention. (Exhibit 3) Joe Doe returned to Buck's apartment on September 11, 2019. (Exhibit 3) On that date, shockingly, Buck again personally and intentionally injected two dangerously large doses of

1 methamphetamine into Doe. (Exhibit 3) Doe again developed the symptoms of
2 methamphetamine overdose. (Exhibit 3) Buck refused to render aid to Doe, but rather thwarted
3 Doe's attempts to get help. (Exhibit 3) Doe eventually fled the apartment and called 911 from a
4 nearby gas station. (Exhibit 3) Doe was transported to a nearby hospital for treatment.

5 In addition to these three incidents, defendant Buck has engaged in and continues to
6 engage in the exact same behavior, namely preying on vulnerable men and injecting them with
7 dangerously large doses of methamphetamine. The full scope of his consistent malicious
8 behavior is unknown. However, during the investigation into these incidents, the Los Angeles
9 County Sheriff's Department found hundreds of photographs, taken in Defendant Buck's
10 residence, of men in compromising positions. (Exhibit 4) It is only a matter of time before
11 another one of these vulnerable young men dies of an overdose.

12 As stated above, defendant Buck is clearly a predator with no regard for human life. His
13 behavior is malicious and beyond reckless. His fetish led to the grooming and eventual death of
14 Gemmel Moore. Undeterred, defendant Buck then engaged in the exact same behavior with
15 Timothy Dean, leading to his untimely death. Shockingly, defendant Buck continued his path of
16 destruction, nearly causing another fatal incident. His deadly behavior has not stopped. The
17 People are respectfully requesting this court set bail at \$4,000,000 to either deter the defendant
18 from his predatory behavior, or keep him in custody to prevent yet another senseless death.

MEMORANDUM OF POINTS AND AUTHORITIES

The factors and circumstances that a judge or magistrate must always consider in setting bail for a given defendant are set forth in both the California Constitution and the Penal Code. Those considerations are (1) the protection of the public; (2) the seriousness of the offense charged; (3) the previous criminal record of the defendant; and (4) the probability that the defendant will appear at a trial or hearing on the case. Cal. Const. Art. I, § 28(f)(3); Penal Code § 1275(a)(1). Both the legislature and the citizens of California have explicitly and repeatedly mandated that “[t]he public safety shall be the primary consideration.”¹ Cal. Const. Art. I, § 28 (f)(3); Penal Code § 1275(a)(1) (emphasis added).

These factors are “not necessarily exhaustive.” *In re Alberto* (2002) 102 Cal.App.4th 421, 430. Examples of such non-codified, albeit judicially endorsed and relevant circumstances including the moral turpitude of the offense committed by the defendant. *Id.* at 430-431 (citing with approval cases addressing these and other circumstances). Further, the code sections pertaining to the analogous situation where a judge determines whether a defendant should be released on his or her own recognizance provided further guidance. For example, Penal Code § 1270.1(c) requires that, in making the determination to release a detained person, the potential danger posed by the defendant includes the specific consideration of “threats that have been made by the detained person and any past acts of violence.”

In addressing each of the relevant circumstances, the charges and allegations against the defendant are presumed true. *See Ex parte Ruef* (1908) 7 Cal.App.750.

In *Galen v. County of Los Angeles*, defendant Galen filed a lawsuit against the Los Angeles County District Attorney's office claiming excessive bail. Galen was arrested on a

¹ Although there was formerly some dispute over the propriety of the explicit emphasis on public safety in both Penal Code section 1275 and former Article I, section 28(e) of the California Constitution, this issue has been definitively settled. In passing Proposition 9 through the initiative process, California's citizens have affirmatively endorsed the requirement that, “[t]he public safety shall be the primary consideration” in setting the amount of bail and enshrined it in what is now Article I, section 28(f)(3) of the California Constitution; i.e., the subdivision entitled “Public Safety Bail.”

1 domestic violence charge and given \$50,000 bail, per schedule. *Galen v. County of Los Angeles*
2 (2006) 468 F.3d 563. A bail deviation request was filed and the court commissioner raised the
3 bail to \$1,000,000. Galen argued that the \$1,000,000 bail was 2000% more than the \$50,000
4 suggested in the bail schedule. The 9th Circuit found that the \$1,000,000 bail was not excessive.
5 *Id.* The court stated, in relevant part:

6 Galen's contentions that his bail was excessive simply because it was 2000 percent
7 higher than the default amount for section 273.5 violations, and greater than the default
8 amount for other, more serious crimes, are likewise unavailing. Excessiveness cannot be
9 determined by a general mathematical formula, but rather turns on the correlation
10 between the state interests a judicial officer seeks to protect and the nature and magnitude
11 of the bail conditions imposed in a particular case.

12 *Id.* at 573. (See *Salerno* at 754.)

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14 A. *In Re Humphrey* (2018) 19 Cal.App.5th 1006

15 As articulated by the court in the recent case of *In re Humphrey* (2018) 19 Cal.App.5th
16 1006, when setting bail, a court must inquire into the defendant's ability to pay the amount of
17 bail ordered because that finding "is critical...to guard against improper detention based only on
18 financial resources." *Humphrey* at 30. Penal Code § 1270.1 requires a court to consider a
19 defendant's ability to post bond as a factor when determining bail. However, it is defendant's
20 burden to show his inability to afford the bond. (Penal Code § 1270.1 (c) [the court shall also
21 consider any evidence offered by the detained person regarding...his or her ability to post bond].)
22 Further, *Humphrey* did not define "ability to pay" nor did it require that bail must be set in an
23 amount that a defendant can pay. As stated by the court, in relevant part:

24 If the court concludes that an amount of bail the defendant is unable to pay is required to
25 ensure his or her future court appearances, it may impose that amount only upon a
26 determination by clear and convincing evidence that no less restrictive alternative will
27 satisfy that purpose.

1 *Humphrey* at 31.

2 Regardless of a defendant's ability to pay, judges have discretion to order preventive
3 detention in certain circumstances when the court makes the requisite findings. Cal. Const. Art. 1
4 §§ 12 and 28(f)(3); *Humphrey* at 3; Pretrial Detention Reform Workgroup, Recommendations to
5 the Chief Justice, Oct. 2017, at 52 ("In the limited number of cases where no condition or
6 combination of conditions can assure public safety, judges must have the authority to detain
7 individuals in custody to protect the public, victims, and witnesses.) Specifically, a trial court
8 may still detain an individual after inquiring of the defendant's ability to pay a bond amount and
9 making findings on the record that either (1) the defendant has the financial ability to pay but
10 failed to pay the amount of bail the court finds reasonably necessary to ensure his or her
11 appearance at further court proceedings; or (2) the defendant is unable to pay that amount and no
12 less restrictive conditions of release would be sufficient to reasonably assure such appearance; or
13 (3) no less restrictive nonfinancial conditions of release would be sufficient to protect the victim
14 and the community. *Humphrey* at 17.

15 When setting bail in an amount that deviates from the bail schedule, express findings and
16 statements of decisions are required. Cal. Const. Art. I, § 28 (f)(3); Penal Code § 1270.1 (d). In
17 the same vein, *Humphrey* cautioned against generalized statements such as "substantial flight
18 risk," "danger to society," "some risk to society," or generalizations of future criminality, as they
19 would be insufficient. (*Humphrey* at 32-33, quoting *In re Pipinos* (1982) 33 Cal.3d 189.) Thus,
20 when setting, reducing, or denying bail, the court must state specific individualized facts and
21 circumstances to support its order.

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I.

2 **BAIL SHOULD BE SET AT FOUR MILLION DOLLARS OR MORE TO**

3 **ENSURE THE SAFETY OF THE PUBLIC AND THE ATTENDANCE**

4 **OF THE DEFENDANT AT TRIAL**

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6 A. Bail Should Be Set At \$4,000,000 To Protect the Public from Defendant Buck

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8 Public safety is both the primary and overarching factor for a court to consider in setting
9 bail. Cal. Const. Art. I, § 28(f)(3); Penal Code § 1275(a)(1); *see People v. Indiana Lumbermans*
10 *Mutual Insurance Company* (2011) 192 Cal.App.4th 929, 936 (“the purpose of (Penal Code)
11 § 1275 is to ensure public safety.”) An increased bail amount best serves this goal by increasing
12 the potential repercussions for future violations and thus serving as a deterrent.

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14 This court is in the unique position of not only having the ability to stop this terrifying
15 saga of predatory behavior, but this court is also legally mandated to set a bail amount high
16 enough to ensure that either defendant Buck stops his criminal activity, or he remains in custody.
17 Accordingly, the People are requesting this court set bail in the amount of \$4,000,000.

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19 B. Seriousness of the Crimes Charged

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21 In the present case, Buck is charged with one count of felony battery causing serious
22 injury, and two narcotics related charges. For the purpose of the bail hearing, the allegations of
23 the criminal complaint (and by analogy the arrest report for pre-complaint setting of bail) are
24 presumed to be true. *See Ex parte Ruef* (1908) 7 Cal.App. 750. Accordingly, in considering an
25 appropriate dollar amount for bail, this court must presume that defendant Buck committed the
26 charged crimes.

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28 C. Previous Criminal Record and Acts of Violence by Defendant Buck

29 Defendant Edward Buck is a violent, dangerous sexual predator. Clearly, in considering
30 his previous criminal record and acts of violence, this court must set bail at an amount high
31 enough to stop this recurrent criminal behavior. Buck’s aggressive and malicious behavior led to
32 the death of two men in Buck’s apartment, Gemmel Moore and Timothy Dean. Not deterred by
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1 the senseless deaths of Moore and Dean, the defendant nearly killed a third victim last week. The
2 defendant's predatory acts and willful disregard for human life must be stopped before another
3 life is lost.

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5 D. Bail Should Be Set At \$4,000,000 To Ensure Defendant Buck Will Appear for Trial

6 Although public safety is the primary consideration, ensuring the defendant's attendance
7 at trial is also an important factor to consider when setting bail. The defendant has an unknown
8 amount of funds and no ties to the Los Angeles area. He is not only facing the current filed
9 charges, but he is also still a suspect in the deaths of Gemmel Moore and Timothy Dean. Further,
10 the defendant is facing civil liability in a lawsuit filed by the family of Gemmel Moore.
11 Accordingly, this court must set a bail amount high enough to ensure defendant Buck will in fact
12 return to court to stand trial on this case.

13 Based on the above, the People respectfully request the defendant's bail be set at
14 \$4,000,000.

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II.

THE COURT SHOULD PLACE A HOLD ON THE DEFENDANT

TO ENSURE THAT NO PORTION OF THE BOND

CONSIDERATION WAS FELONIOUSLY OBTAINED

As discussed above, the primary consideration by the court in setting bail is public safety. A secondary, but also important consideration, is ensuring that a defendant will appear in court. Once the court has determined an appropriate bail amount, the court must then ensure the bond does in fact serve to deter the defendant from further criminal activity and ensure his appearance. Any security providing collateral for the bond must be from a legal and legitimate source that will motive the defendant to comply with the terms of bail. If the surety behind the bond is not significant to the defendant, or if it is obtained by felonious means, then a criminal defendant will be more likely to continue his criminal behavior, and be less likely to appear in court.

Penal Code § 1275.1 reads, in relevant part:

- (a) Bail, pursuant to this chapter, shall not be accepted unless a judge or magistrate finds that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.
- (b) A hold on the release of a defendant from custody shall only be ordered by a magistrate or judge if any of the following occurs:
 - (1) A peace officer, as defined in Section 830, files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made or promised for its execution was feloniously obtained.
 - ...
 - (3) The magistrate or judge has probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.
- (c) Once a magistrate or judge has determined that probable cause exists, as provided in subdivision (b), a defendant bears the burden by a preponderance of the evidence to show that no part

1 of any consideration, pledge, security, deposit, or
2 indemnification paid, given, made, or promised for its
3 execution was obtained by felonious means.

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5 The responsibility of the court to ensure the integrity of the bond is firmly established in both
6 state and federal law. As stated by the 9th Circuit:

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“The mere proffering of a corporate surety bond in the amount set at bail does not deprive the Court to inquire into areas which might bear on whether the defendant will make future court appearances if released on bond. The Court has the right and duty to satisfy itself that there is more than just a financial assurance that a bailed defendant will appear in court when required The source of the security providing the collateral for the bond can provide valuable information regarding the motivation for a defendant to appear. If the bond were secured by the property of defendant's relatives, or close friends, the court could, logically, conclude that the possibility of financial harm to those individuals might motivate a defendant to appear. On the other hand, if the security comes from an illegitimate source, and is merely a 'business' expense for a dealer in contraband, there is a paucity of moral force compelling a defendant to reappear. Indeed, such a source would be more consistent with a possible fulfillment of a pledge to a defendant of purchased freedom if caught.”

13 *United States v. Ellis De Marchena* (1971) 330 F.Supp. 1223, 1226.

14 Defendant Buck is not employed. He has no known source of income, yet he is able to
15 fund his lifestyle of preying on vulnerable men. He is engaged in frequent narcotics activity, and
16 he may be funding his lifestyle with narcotics trafficking.

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18 Accordingly, this court should place a hold on defendant Buck, pursuant to
19 Penal Code § 1275.1. With the hold, if the defendant is able to post bond, the defendant must
20 then show that no part of the bond consideration was feloniously obtained.

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III.
CONCLUSION

For the reasons listed above, the People are respectfully requesting this court set bail in the amount of \$4,000,000 and place a hold on the defendant pending evidence of the source of bail.

Dated this 17th day of September, 2019

Respectfully submitted,

JACKIE LACEY
District Attorney of Los Angeles County

By:

CYNTHIA BARNES
Deputy District Attorney
Attorney for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

V.

01 EDWARD BUCK,

Defendant.

Case No. BA481154

**[PROPOSED] ORDER PROHIBITING
ACCEPTANCE OF PREFERRED
BAIL**

01 EDWARD BUCK,
Defendant.

**TO THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, OR ANY
OTHER LAW ENFORCEMENT AGENCY HAVING CUSTODY OF DEFENDANT-
PRISONER, EDWARD BUCK:**

GOOD CAUSE HAVING BEEN SHOWN, IT IS ORDERED that, in the event bail is proffered for the above-described defendant-prisoner, such bail shall not be accepted for this defendant-prisoner nor shall this defendant-prisoner be released from custody unless and until this Court or any other competent court has conducted a hearing pursuant to Penal Code § 1275.1 and has issued an order requiring the acceptance of bail and the release of the defendant-prisoner.

DATED:

THE HONORABLE
JUDGE OF THE SUPERIOR COURT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA